

**Clark Machine Corporation and Shopmen's Local Union No. 486 of the International Association of Bridge, Structural, and Ornamental Iron Workers (AFL-CIO), Petitioner. Case 5-RC-13619**

August 31, 1992

**DECISION AND DIRECTION**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered a determinative challenge in an election held September 6, 1991, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of ballots shows 18 for and 17 against the Petitioner with 1 challenged ballot.

The Board has reviewed the record in light of the exceptions and briefs and makes the following findings.

The sole issue before the Board is whether Donald Woolfrey is a supervisor within the meaning of Section 2(11) of the Act. The hearing officer found that he was and recommended that the challenge to his ballot be sustained. We do not agree.

The Employer, Clark Machine Corporation, has five departments: parts, automatic, assembly, machine shop, and fabrication shop (fab shop). Paul Zappala is the president of the Company. Jerry Becker, the general manager, reports to Zappala. James Baker is the industrial manager and the manager of machine and fabricating divisions; he reports to Becker. At the time of the election, Baker also was acting foreman in the fab shop.

The fab shop has 15 employees who weld, cut, and fabricate different items using sheet metal, I-beams, and structural steel. The fab shop is separated from the machine shop by a wall with a door. Harry Swenson, foreman of the machine shop, on occasion requests the transfer of welders from the fab shop for specific projects. Swenson reports to Baker.

Until late spring/early summer 1991, Donald Woolfrey worked as a fitter/welder in the fab shop. He was a helper to Frank Neukam, one of the more experienced fabricators in the shop. Like Neukam, other employees in the shop possessed greater technical expertise in welding and fitting than Woolfrey and had higher hourly pay than Woolfrey.

In early 1991, Baker became acting foreman of the fab shop. Sometime that spring, Baker was approached by either Zappala or Becker about finding a new foreman for the fab shop. Because business had been slow and the number of employees in the shop had been decreased by layoffs, Baker suggested that he could con-

tinue acting as foreman as long as he had an assistant to take care of timecards, attendance sheets, and other paperwork. As the workers in the fab shop were skilled and experienced laborers, they did not require close supervision. Baker asked Woolfrey to be his assistant, and Woolfrey accepted. Woolfrey's change in duties was never announced to the other fab shop employees.<sup>1</sup>

There is no evidence in the record that Woolfrey had the authority to hire, fire, suspend, lay off, recall, discharge, reward, or discipline employees. The hearing officer based her supervisory finding on the ground that Woolfrey responsibly directed the fab shop employees. The hearing officer principally relied on Woolfrey's role in assigning work to employees, transferring them, and instructing them to correct mistakes.

It is well established that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on the employee, provided that authority is exercised with independent judgment on behalf of management and not in a routine manner.<sup>2</sup> Thus, the exercise of some "supervisory authority" in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on an employee.<sup>3</sup>

Contrary to the hearing officer, we conclude that, although Woolfrey exercised some direction-of-work authority in carrying out his duties, the Petitioner failed to establish that Woolfrey used independent judgment in exercising his limited authority. It is well established that the burden of proving supervisory status rests on the party asserting that such status exists.<sup>4</sup>

Although Woolfrey assigned jobs to the fab shop employees, the hearing officer correctly found that in most instances Baker gave Woolfrey the assignments, usually consisting of blueprints and drawings, which Woolfrey merely relayed to the employees Baker had chosen. Woolfrey, however, did exercise some judgment in assigning "bucket jobs," small jobs that could usually be completed in a day. He chose who performed the job based on the employee's availability and ability. "Bucket jobs" were, however, routine, and often repeat, jobs. As the different abilities among the employees in the fab shop were well known, it was not difficult to determine which employee could handle which job. Further, on repeat jobs, Woolfrey merely had to give the job to the employee who had done the job before. Such an assignment is a function of routine work judgment and not a function of authority to use the type of independent judgment required of a super-

<sup>1</sup> Woolfrey reverted to his prior job duties after the September 1991 election.

<sup>2</sup> *Bowne of Houston*, 280 NLRB 1222, 1223 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

visor.<sup>5</sup> Woolfrey also assigned cleanup and maintenance tasks based solely on the availability of the employees, and that similarly was routine.

The transfer of fab shop employees to other departments, particularly the machine shop, was initiated by the foremen of the other departments. Usually the foreman would request a specific employee. Woolfrey's "judgment" in these instances was based on knowing whether the requested employee was available. If the requested employee was not available, or if the request was for any welder, Woolfrey would select the employee based on availability and ability. Such judgment is routine and is based merely on knowledge possessed by any employee in the fab shop of the different abilities of the employees in that shop.

The hearing officer stated in her report that there were "numerous examples" of Woolfrey instructing employees to rework mistakes after he inspected their work. There is no evidence Woolfrey ordered any employee to correct a flaw in a finished job. Rather, the evidence shows that on a few occasions, at most, Woolfrey pointed out obvious flaws to employees. Furthermore, once a flaw was found, the employee working on the project would correct it automatically, without the need for an order to do so.<sup>6</sup> Employees were supposed to check their own work, and Woolfrey was not the only employee who checked other employees' work. No independent judgment was therefore needed in correcting flaws beyond the type of routine work judgment that all the fab shop employees used in order to perform their jobs.

The record shows that Woolfrey also granted time off. Both Baker and Woolfrey testified without contradiction that because work was slow that summer Baker gave Woolfrey standing orders to grant time off to employees who had vacation time. Thus, with respect to granting employees time off, Woolfrey performed an essentially clerical function and did not exercise any independent judgment. Although Woolfrey asked employees to work overtime, the record shows that overtime was voluntary. Woolfrey had no authority to order employees to work overtime, and most of his requests were refused.

Timecards were usually corrected and initialed when an employee forgot to punch in or out at the beginning or end of a job. At first Woolfrey would obtain permission from Baker to correct the cards. Baker eventually told Woolfrey that when Baker was not available and Woolfrey knew that the employee had done the job, Woolfrey should correct and initial the card. No independent judgment was needed for Woolfrey to correct such oversights.

Woolfrey talked with customers to resolve minor problems in blueprints or directions. Such routine managerial tasks did not serve any supervisory function. Although Woolfrey attended a few production meetings, he was not the only employee to do so. Further, there is nothing in the record to show that any of Woolfrey's opinions or recommendations were ever put into effect or even considered by Baker and the other supervisors. Woolfrey's rate of pay did not change with his change in duties. He continued to be paid the same hourly wage and receive overtime like other fab shop employees, unlike supervisors who were salaried and could not accrue overtime.<sup>7</sup>

Most of Woolfrey's other duties were clerical in nature and required no independent judgment. For instance, collecting timecards, logging absences, keeping a calendar of the employees' vacation time, handing out paychecks, requesting materials, and logging routers (job-time records) are all routine clerical tasks. Also, although some of Woolfrey's duties clearly changed in the summer of 1991, most witnesses testified that Woolfrey continued to do manual work in the shop, albeit not as often.

The hearing officer found that the employees considered Woolfrey to be a supervisor. It is, however, the actual exercise of supervisory authority, not employee belief, that is determinative. The record shows that Baker was routinely in the fab shop 2 to 3 hours a day. If Baker was not present, he could be reached by beeper. In addition, Foremen Becker and Swenson were available to handle any problems. Further, employees testified that they continued to go to Baker with their problems after Woolfrey's change in duties. In fact, Frank Neukam, one of the more experienced employees in the fab shop, testified that he never went to Woolfrey with problems, but only to Baker.

For the above reasons, we conclude that the Petitioner has not met its burden of establishing that Woolfrey was a supervisor within the meaning of Section 2(11) of the Act. In examining each incident that is alleged to show that Woolfrey was responsible for directing the fab shop employees, we find that in each instance the evidence fails to establish that the authority exercised was anything more than strictly routine or that it involved the use of independent judgment. At most, the evidence that Woolfrey occasionally exercised some authority, as in the assignment of "bucket jobs" or in the transfer of employees, shows that it was exercised in a routine manner. Such conduct is insufficient to establish supervisory status under the Act. We therefore find that Woolfrey is not a statutory su-

<sup>5</sup> *Chicago Metallic Corp.*, 273 NLRB 1677, 1692 (1985).

<sup>6</sup> The hearing officer found that on one occasion Woolfrey instructed employee Post to do a job differently from what he was doing. We find no support in the record for this finding.

<sup>7</sup> The hearing officer's suggestion that Woolfrey was compensated for his new position by being allowed to work more overtime is not supported by the record and, even if it were, would not be determinative of Woolfrey's supervisory status.

pervisor and conclude that the challenge to his ballot should be overruled.

Accordingly, the challenge to the ballot of Woolfrey is overruled, and as his ballot is sufficient to affect the results of the election, we shall direct the Regional Director to open and count the ballot, to prepare a revised tally of ballots, and to issue the appropriate certification.

#### DIRECTION

IT IS DIRECTED that the Regional Director, within 14 days from the date of this decision, open and count the ballot cast by Donald Woolfrey and prepare and cause to be served on the parties a revised tally of ballots. Thereafter, the Regional Director shall issue the appropriate certification.